HC-One v HMRC: solvent liquidations and SDLT

Large Corporate | Property Tax

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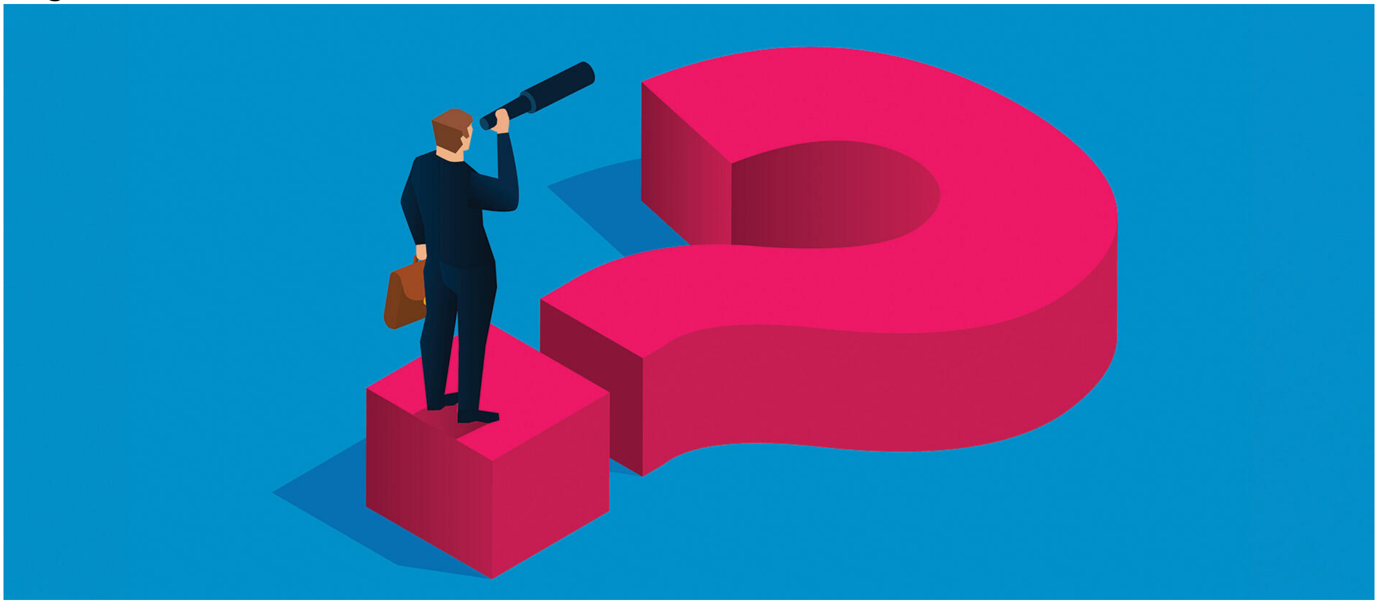

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In *HC-One*, the tribunal rejected HMRC's 'wrong end of the telescope' approach, confirming the availability of SDLT group relief and clarifying the limits of FA 2003 s 75A.

Key Points

What is the issue?

The First-tier Tribunal considered whether a solvent members' voluntary liquidation undertaken before a share sale prevented SDLT group relief from being clawed back, and whether the arrangements were caught by the anti-avoidance provisions in FA 2003 Schedule 7 or s 75A.

What does it mean to me?

The decision provides important guidance on the interpretation of Schedule 7 and the limits of s 75A. Although only a First-tier Tribunal decision, it will be of significant interest to advisers involved in corporate reorganisations and business disposals.

What can I take away?

The tribunal confirmed that statutory reliefs should be applied according to their terms, while reinforcing that commercially connected transactions will not automatically fall within s 75A. However, similar arrangements are likely to remain subject to close HMRC scrutiny.

A carefully planned corporate reorganisation before a business sale can produce significant stamp duty land tax (SDLT) savings, but where does legitimate tax planning end and tax avoidance begin? The First-tier Tribunal's decision in *HC-One No.1 Limited v HMRC* [2026] UKFTT 678 (TC) tackles that question directly, providing important guidance on the circumstances in which SDLT group relief can be clawed back under Schedule 7 to the Finance Act (FA) 2003, and on the scope of FA 2003 s 75A. Although the decision is fact-specific and may yet be appealed, it offers valuable insight into the distinction between legitimate statutory tax mitigation and tax avoidance.

The background and facts

The case arose from Bupa's planned disposal of a substantial part of its UK care homes business. Following a strategic review, the group decided to sell a large portfolio of care homes while retaining a smaller core portfolio. The proposed disposal was driven by commercial concerns, including brand risk, regulatory pressure, operational complexity and declining returns in parts of the care homes sector.

A major preliminary step was the unwinding of a legacy securitisation structure. Around 60 of the properties intended for sale formed part of a securitisation involving 115 care homes. To enable the sale, the securitisation had to be terminated; the issuer redeemed £235 million of notes and paid a premium of £146.6 million funded by the group.

The group then implemented a corporate reorganisation. A new holding company, Bupa Care Homes (Holdings) Limited, was incorporated. HC-One No.1 Limited, the appellant, was incorporated beneath it as the sale vehicle. Between July and November 2016, 98 English care home properties were transferred from various operating companies to the appellant, with SDLT group relief claimed on each transfer.

Immediately before the share sale agreement was entered into, Bupa Care Homes Group Limited, an intermediate parent company above the operating companies (the vendors under the group relief transactions), was placed into members' voluntary liquidation.

As a result, the operating companies ceased to be members of the same SDLT group as the appellant. The appellant argued, however, that because the de-grouping resulted from the liquidation, Schedule 7 to FA 2003 para 4(4) prevented the normal clawback of the SDLT group relief.

The statutory framework

Schedule 7 provides SDLT group relief for qualifying intra-group land transactions. However, para 2(4A) denies relief where a transaction forms part of arrangements where the main purpose, or one of the main purposes, is the avoidance of SDLT. Para 3 then provides for the withdrawal of group relief where the purchaser ceases to be in the same group as the vendor within three years, while para 4 sets out exceptions to that clawback rule.

The relevant exception in this case was para 4(4), which applies where the de-grouping occurs by reason of anything done for the purposes of, or in the course of, winding up the vendor or another company above the vendor in the group structure.

The assessments and determinations

HMRC challenged the SDLT treatment on two grounds. First, it issued discovery assessments on the basis that group relief was unavailable because the intra-group transfers formed part of arrangements of which a main purpose was the avoidance of SDLT, engaging Schedule 7 para 2(4A).

Second, and in the alternative, HMRC issued determinations under FA 2003 s 75A, arguing that the intra-group transfers, the liquidation and the subsequent share sale were scheme transactions that resulted in less SDLT than a notional direct transaction would have done, satisfying the conditions for s 75A to apply.

The appellant argued that the arrangements were commercially driven and that the liquidation fell within the express exception in Schedule 7 para 4(4), so there was no avoidance. It also argued that the later share sale was not a transaction 'involved in connection with' the earlier intra-group acquisitions for the purposes of s 75A.

The tribunal identified five issues:

- whether group relief was denied under Schedule 7 on the basis of a main purpose of avoiding SDLT;
- whether s 75A applied;
- whether the assessments were invalid because HMRC had deliberately over-assessed;
- whether certain assessments were invalid as block assessments; and
- if needed, the correct method for determining chargeable consideration.

Group relief: was there SDLT avoidance?

The central issue was whether the liquidation of the holding company prevented the claw back of SDLT group relief under Schedule 7 para 4(4), or whether planning the liquidation to achieve that outcome amounted to SDLT avoidance. If it did, para 2(4A) could deny group relief because the intra-group transfers formed part of arrangements of which the main purpose, or one of the main purposes, was SDLT avoidance.

The tribunal accepted that the timing of the liquidation was driven by the desire to invoke para 4(4). It also found that there was no evidence of any commercial reason why Bupa Care Homes Group Limited needed to be wound up, although it was accepted that the company had originally been used for securitisation purposes and no longer had an obvious continuing role.

HMRC argued that the liquidation had been inserted to prevent the normal three-year clawback rule from applying. In its view, para 4(4) had to be read in the context that group relief is available only where the transferred assets remain within the relevant corporate group for three years. An unconstrained interpretation of para 4(4) would, it argued, invite tax avoidance by allowing taxpayers to transfer assets within a group, liquidate the vendor and then sell the purchaser without triggering the clawback.

The tribunal rejected that approach to statutory interpretation. It held that para 4(4) is not drafted in a limited or qualified way, unlike many other provisions under Schedule 7. It also held that it was not permissible to read words that were not there into the statute, or to infer a purpose that was not apparent from the statutory language chosen. The exception in para 4(4) is not limited to insolvent liquidations, commercially necessary liquidations or liquidations with a non-tax motive. Although the appellant's argument regarding para 4(4) was surprising, it was not absurd, even where the liquidation served no commercial purpose.

The tribunal acknowledged that Parliament might have drafted the provision differently had it anticipated that taxpayers would use the liquidation of a company above the vendor to preserve group relief. However, it refused to read additional limitations into the statute. Once the company had been wound up, genuine legal and economic consequences followed. This was not a case in which a tax advantage had been obtained without accepting those consequences. The fact that the liquidation was solvent, planned and timed with the SDLT consequences in mind did not, of itself, mean that reliance on the exception was tax avoidance.

The tribunal therefore concluded that using a members' voluntary liquidation to fall within para 4(4) did not amount to tax avoidance for the purposes of para 2(4A). Group relief was therefore available and the appeal succeeded on the basis of that issue, although the judge went on to consider the remaining questions.

The alternative finding on main purpose

Having concluded that the liquidation did not amount to SDLT avoidance, the tribunal nevertheless went on to consider the alternative position. If preserving group relief through the liquidation had constituted SDLT avoidance, would that avoidance have been a 'main purpose', or one of the main purposes, of the arrangements?

The appellant would not have succeeded on that issue. The tribunal found that the group's overarching disposal objective was commercial. It accepted that the sale was driven by brand, operational and investment considerations, and that the preferred route was a share sale of a company holding the care home assets in order to maximise purchaser interest and reduce execution risk.

The tribunal also accepted that a number of commercial and operational considerations materially shaped the structure, including TUPE and employee relations risks, legacy liability concerns, supplier and customer contract issues, as well as SDLT considerations.

However, the tribunal found that preserving group relief was one of the main purposes of the specific arrangements adopted. The liquidation had been 'baked in' from an early stage and was timed precisely to secure the outcome in para 4(4). Had that outcome constituted tax avoidance, para 2(4A) would have denied the group relief.

The taxpayer therefore won because the tribunal treated the para 4(4) liquidation as a statutory tax mitigation route rather than avoidance. Importantly, had group relief been denied, it would have been denied even on transfers of properties that were retained by the group and not sold to HC-One, because those transfers formed part of the same arrangements and had the same purpose.

Section 75A: commercial connection is not enough

HMRC's alternative case was that s 75A applied. It argued that the intra-group transfers, the liquidation and the subsequent share sale formed part of a single scheme by which the properties ended up outside the group with a reduced SDLT charge.

The parties agreed that the operating companies were the vendors and the appellant was the purchaser for the purposes of s 75A, and that the intra-group transfers were the relevant disposals and acquisitions. The dispute was whether the later liquidation and share sale were transactions 'involved in connection with' those disposals and acquisitions, and whether more SDLT would have been payable on the notional transaction.

The appellant argued that the share sale and the liquidation were not transactions involved in connection with the intra-group disposals and acquisitions because the corporate sale took place a year later and did not facilitate the earlier property transfers. Moreover, the notional transaction under s 75A would still have attracted group relief, as it would have been between the selling operating companies and the appellant (as agreed by the parties), and deemed to occur at a time when they were members of the same corporate group.

The tribunal held that, in order to be scheme transactions, the relevant transactions must still contribute directly or indirectly to the means by which the chargeable interest passes from the vendor to the purchaser. On the facts, the share sale was not part of the series of transactions by which the properties passed from the operating companies to the appellant. The property transfers had already taken place. The later share sale was the means by which the appellant, holding the properties and businesses, was sold to HC-One. The tribunal described HMRC's approach as 'looking through the wrong end of the telescope'.

The liquidation also did not satisfy the test. Although it ensured that the SDLT group relief was not clawed back, it was not a transaction involved in connection with the disposal by the operating companies and the acquisition by the appellant. Accordingly, s 75A did not apply and the appeal against the determinations was allowed.

Broader impact on SDLT group relief and clawback

The most important wider point is the tribunal's treatment of para 4(4). Although not legally binding, it indicates that the exception to the three-year clawback rule is not limited to insolvent or commercially compelled liquidations. A solvent members' voluntary liquidation can fall within para 4(4) if the statutory conditions are satisfied and the winding up is legally effective.

The tribunal also adopted a relatively narrow interpretation of s 75A. HMRC argued that the wider commercial divestment was sufficient to link the later share sale and liquidation to the earlier property transfers. The tribunal rejected that approach. The focus remains on the disposal by the operating companies and the acquisition by the appellant, rather than every transaction forming part of the wider commercial project.

More broadly, *HC-One* suggests that even a wide-ranging anti-avoidance provision has limits. A later transaction may be commercially connected with an earlier property transfer, and may even explain why that transfer was undertaken, without forming part of the mechanism by which the property passed from the vendor to the purchaser. This is a narrower reading of ‘involved in connection with’ than some may have expected, and it remains to be seen whether this finding will survive an appeal.

In conclusion

Although *HC-One* is a First-tier Tribunal decision, it provides valuable guidance on the operation of SDLT group relief and the limits of FA 2003 s 75A. The judgment demonstrates that statutory reliefs should be applied according to the language Parliament has chosen, even where that produces an unexpected result. In particular, the tribunal refused to read limitations into para 4(4) that Parliament had not included, confirming that the exception is not confined to insolvent or commercially necessary liquidations.

Importantly, the tribunal’s reasoning does not suggest that the taxpayer’s motives were wholly free of tax considerations. Rather, it accepted that preserving SDLT group relief was one of the main purposes of the arrangements adopted. The taxpayer nevertheless succeeded because the tribunal concluded that relying on Schedule 7 para 4(4) did not amount to tax avoidance. Had it reached the opposite conclusion on that point, Schedule 7 para 2(4A) would have denied the relief.

Taxpayers contemplating similar arrangements should therefore proceed with caution. HMRC is likely to continue to scrutinise such structures closely, and the tribunal’s interpretation of Schedule 7 para 4(4) and FA 2003 s 75A may yet be tested on appeal.